IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 28351 of 2005(A)

PETITIONER:

T.V. KARTHIYAYANI AMMA, AGED 77 YEARS,
W/O. LATE KAMMARAN MANIYANI,THEKKUMBADAN VEEDU,
KARIVELLUR POST, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN,
SRI.SREEJITH S.NAIR.

RESPONDENT:
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1. UNION OF INDIA,
REPRESENTED BY UNDER SECRETARY,
DEPARTMENT OF HOME AFFAIRS, FREEDOM FIGHTERS
DIVISION, LOK NAYAK BHAVAN, NEW DELHI.

***ADDL.R2. STATE OF KERALA, REPRESENTED BY**
SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL ADMINISTRATION,
SECRETARIATE, THIRUVANANTHAPURAM.

***ADDL.R3. THE DISTRICT COLLECTOR,**
KANNUR.

***ADDL. RESPONDENTS 2 & 3 ARE IMPLEADED AS PER ORDER**
DATED 04/08/2006 IN I.A. NO. 9759/2006.

BY ADV. SRI.DEEPU THANKAN,
GOVT. PLEADER SRI. V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.28351/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SWATANTRATA SAINIK SAMMAN PENSION SCHEME.

EXT.P.2: COPY OF THE RELEVANT EXTRACT FROM THE UNDER TRIAL REGISTER CONCERNING TO SRI. KAMMARAN MANIYANI.

EXT.P.3: COPY OF THE RELEVANT EXTRACT FROM THE CONVICT REGISTER CONCERNING TO THE PETITIONERS LATE HUSBAND.

EXT.P.4: COPY OF THE ORDER DTD. 15/03/1979 SUSPENDING THE PENSION GRANTED.

EXT.P.5: COPY OF THE COMMUNICATION DTD. 28/09/1998.

EXT.P.6: COPY OF THE COMMUNICATION DTD. 02/05/2003.

EXT.P.7: COPY OF THE JUDGMENT IN W.P.(C). NO. 25517/2004 DTD. 01/04/2005.

EXT.P.8: COPY OF THE COMMUNICATION DTD. 11/04/2005.

EXT.P.9: COPY OF THE RELEVANT EXTRACT OF THE JUDGMENT IN S.C. NO. 14/47.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 28351 of 2005-A.

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Dated this the 13th day of August, 2007.

J U D G M E N T

The petitioner is the widow of late Sri.Kammaran Maniyani who was a prominent freedom fighter. The claim is under the Swathantrata Sainik Samman Pension Scheme on the basis of his participation in the Karivellur struggle. The petitioner's late husband was a proclaimed offender and a warrant of arrest was issued against him. Ext.P2 is the copy of the extract from the under trial register concerning U.T.No.464 namely, the late husband of the petitioner. It shows the date of admission as 17.1.1947, the date of sentence as 25.9.1947 and the date of release as 25.9.1947. As the period is more than six months the same satisfies the claim for grant of SSS pension. Ext.P3 shows that he was convicted by the Sessions Court by judgment dated 25.9.1947 and he was transferred to the Central Jail, Vellore on 2.11.1947. In Ext.P3 the details of the offence and the number of the Sessions Case are clearly stated. It is averred in the writ petition that the petitioner is receiving pension under the Kerala Freedom Fighters pension scheme also.

2. The claim for grant of SSS pension was originally sanctioned to the late husband of the petitioner. Thereafter it was suspended by Ext.P4 stating that the Karivellur struggle has not been accepted as qualifying for

pension under the Central Freedom Fighters Pension Scheme, 1972. He was given an opportunity to represent against the said proposal also. The Central Government has recognised the Karivellur struggle as a freedom movement as per Order No.4.1.97 - FF(P) dated 20.1.1998. Again the petitioner's late husband received Ext.P5 letter issued by the Central Government stating that they are awaiting the report from the State Government. Ext.P6 is the letter dated 2.5.2003 recommending the case of the petitioner for sanction of pension under the Central Government scheme. Therein it is clearly stated that the petitioner is a Kerala Freedom Fighters family pensioner also. When further delay occurred the petitioner approached this Court by filing WP(C). No.25517/2004 which was disposed of by Ext.P7 judgment directing the authorities to take decision in the matter.

2. Ext.P8 is the order by which the claim is now rejected. The main reason for rejection is that the names in Exts.P2 and P3 do not tally. It is also stated that in the letter of the Superintendent of Central Prison, Kannur it is reported that as the second page of the original register has worn out the under trial register could not be verified fully. The question is whether the above reasons are sufficient to reject the application for restoration of the pension.

3. On a mere reading of Exts.P2 and P3 it can be seen that the conclusion arrived at in Ext.P8 that the names in Exts.P2 and P3 do not tally

is not correct. Ext.P9 is the relevant portion of the judgment in Sessions Case No.14 and 18 of 1947, wherein the petitioner's late husband was shown as one of the accused. The judgment shows that he was convicted for two years rigorous imprisonment. In Ext.P2 the name has been shown as "T.Kammaran Maniyani, S/o.Chindan", the second column is religion and caste and the answer is Hindu, Maniyani. In Ext.P3, immediately after the title his name is shown without the caste name which is evident from the endorsement in column 2 also. In the title portion his name is shown as Kanhan Thottam Kammaran (Kanakkil Thattaan) S/o.Chindan. Col.2 gives the race, religion and caste as Hindu Maniyani (Nair). The 4th column in both the extracts gives the age of admission as 26/47. The description with height and marks of identification are the same. In Ext.P2 the last column shows the date of conviction with number as 6678. This is the same number in Ext.P3 namely, in the title column. Therefore, there cannot be any dispute regarding the identity of the person. These aspects ought to have been properly verified by the authorities at the time when the order was passed. In the light of Ext.P9 judgment which shows his name as 64th accused there cannot be any dispute about his conviction.

4. Therefore, I am satisfied that the conclusions contained in Ext.P8 are clearly error apparent on the face of the records itself and the same are arrived at without any application of mind. Merely because the

State Government has stated that a page of the original convict register was worn out that cannot defeat the right of the person concerned for grant of pension in the light of clear and cogent evidence. Apart from that this is a case where originally the pension was granted finding that the petitioner is eligible. The only reason stated in Ext.P4 in rejecting the application for pension is that Karivellur struggle has not been recognised as part of freedom movement at that time by the Central Government and in view of the subsequent recognition of the said movement the pension ought to have been restored.

5. In the light of the decision of the Apex Court reported in *Cholan Roadways Ltd. v. G.Thirugnanasambandam* (2005(3) SCC 241) errors of fact can also be a subject matter of judicial review. Here the situation warrants interference and Ext.P8 is therefore quashed. It is declared that the petitioner is entitled for grant of benefit of SSS pension scheme.

6. The next aspect is the date from which the pension is payable. Since the same was granted as evident from Ext.P4 as per order dated 20.10.1996 the learned counsel for the petitioner submits that atleast from the date on which Karivellur struggle was recognised, the petitioner is eligible for grant of the benefit. The learned counsel for the petitioner relied upon a decision rendered in WP(C).No.6001/2005 in an identical matter. That was also a case where the person concerned was granted pension originally. But it

was discontinued on the ground that Karivellur struggle was not recognised as part of the National Freedom Struggle. After referring to the contentions it was held that since the struggle in which the petitioner participated was recognised by the Union of India as part of the freedom struggle from 20.1.1998, the petitioner is entitled to get arrears from 20.1.1998 onwards. Therefore, the petitioner herein is also entitled to get the arrears from 20.1.1998 onwards. There will be a direction to the respondents to issue appropriate orders sanctioning pension with arrears from 20.1.1998 within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-